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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No. 1832 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements ? YES

2. To be referred to the Reporter or not ? YES

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge ? YES

MULCHAND RUGHALAL BAHETI

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner (Absent)

MR ST MEHTA ADDL. PP for Respondent No. 1

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 16/08/96

ORAL JUDGEMENT

Original accused Mulchand Rughlal Baheti by this

Criminal Misc. Application under section 482 of the Criminal Procedure Code, 1973, has moved this Court inter alia praying for quashing and setting-aside the proceedings initiated against him by the learned Metropolitan Magistrate, 17th Court, Ahmedabad, persuant to the complaint filed before it by the opponent Nobatram Chaudhari, for the alleged offences punishable under Section 420 of I.P Code, which came to be registered as Criminal Case No. 1166 of 1985.

2. When the matter was called out, the learned advocate for the petitioner was absent. Despite the fact that Chopdar was sent, he was not available. Under the circumstances, with the assistance of learned APP, Mr. S.T Mehta, this Court has heard and decided this matter. This Court was required to do so because having once obtained the stay and thereby forestalled the proceeding, before the trial Court, right from the year 1985, the petitioner cannot be permitted to delay the hearing of this Misc. Criminal Application at whims and convenience of his learned advocate, taking the Court proceedings as if on joy-ride !! Under such circumstances, this Court is not expected to be at the mercy of the learned advocate to hear and decide the case as and when he makes himself available. The cases particularly wherein interim stay is obtained, it is the bounden duty of the concerned learned advocate to be at the back and call of the Court for hearing and deciding the case whenever his matter is called out or if he has some genuine difficulty than to make some alternative arrangement for final hearing and/or to seek adjournment on some such ground which is appealbale to the Court. In criminal cases the time being the essense, it is the most important factor to be reconsidered, as every day delay was bound to weaken, rather further weaken and ultimately destroy the prosecution case for the simple reason that in the course of time the evidence may get lost and/or suffer serious credibility set-back on any count. This in a way is quite unjust and prejudicial to the aggrieved complainant, rather in a given case antethesis of the justice.

3. Turning to the facts of the case, in substance, it is the case of the complainant that he is a Manager of M/s. Raghuvir Prasad Vijaykumar and other firms, while the accused Mulchand Rughalal Bhati is a cloth merchant doing his business in Revdi Bazar, Ahmedabad. Further according to the complainant, he was knowing the accused since last many years because of business relations. On one night, the accused visited his house saying that as he was near by his house, he accordingly thought to just

visit and meet him. During the course of the conversation accused stated that he was having 2-3 firms in Ahmedabad. He further said to the Complainant that because he (complainant) was having business outside Ahmedabad, many a times he might not be getting prompt payment, and accordingly, instead of having business relations outside he should have such relations with him. Further, according to the complainant, on hearing this talk he was swayed to trust him and accordingly asked the accused to come to his shop. On the next day, the accused went to the shop of the complainant and purchased cloth in all totalling about Rs. 37,038.78 p, which despite repeated demands till the date of filing of the complaint was not paid to him. On the basis of these allegations, he filed a complaint before the learned Metropolitan Magistrate, Court No. 17, Ahmedabad, who in his turn issued bailable warrant against the petitioner-accused herein giving rise to the present Misc.Criminal Application.

4. Perused the Misc. Criminal Application and the complaint filed by Opponent No. 1. Heard the learned APP in absence of the learned advocate for the petitioner-accused. In absence of the learned advocate for the petitioner-accused highlighting and illustrating as to how indeed the facts alleged in the complaint do not prima facie constitute the offence, it is not possible to straighway allow this petition quashing the complaint and proceedings taken up persuant thereto against him. Thus, having regard to the facts and circumstances of the case, without prejudice to his contentions, the petitioner is directed to appear before the Court of learned Metropolitan Magistrate on or before 30th September, 1996, where it will be open to him to plead and show cause that the facts alleged in the complaint do not prima facie disclose any offence and accordingly, the proceedings instituted and process issued persuant thereto against him being ex-facie illegal, the same be quashed and set-aside dropping the criminal proceedings instituted against him. For this purpose, it is indeed not necessary that the petitioner-accused should personally remain present before the learned Magistrate as it will be open to him to make appropriate submissions through his learned advocate. As held by the Supreme Court in the case of K.M Mathew versus State of Kerala, AIR (1992) SC p-2206, we also make it clear that "the order issuing process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence

against the accused," and in this regard if he so satisfies the learned Magistrate.

5. Incidentally, we quite understand that these days, many a times, false, frivolous and vexatious complaints are filed against the innocent persons abusing the process of law to satisfy the malicious urge of personal vengeance. Accordingly on some such manipulated accusations against an innocent citizens false complaints are filed making them to rush to the trial Court on the returnable date and thereafter again and again on every adjourned dates, which many a times can be from quite a long distance including that from the other States at long distances as well !! This certainly causes great deal of physical, mental and financial hardships, inconvenience and embarassment to the accused, which in a way can be described as an uncalled for pre-trial punishment more particularly in cases where the accused gets ultimately acquitted !! In this view of the matter, the learned Magistrate before taking cognizance of the offence and persuant thereto even while issuing the summons, in the first instance instead of playing role of mere post office, must carefully screen and scrutinize the complaint and find out for himself whether in fact it contains any germs or the ingredients of offence making out prima facie case to issue process, and thereafter, even if it makes out prima facie case, then even, it should be quite discreet in exercising its further judicial discretion while issuing the type of process. Accordingly, in the second instance, the learned Magistrate depending upon the facts and circumstances of the case, first of all, should see to it that while issuing the process, the accused in the first place, is informed that on returnable date of summons, he may if he so desires instead of himself remaining present before the Court may appear through his learned advocate. This is with a view to see that if according to the accused the complaint does not disclose prima facie offence, the learned advocate appearing for him may satisfy the learned Magistrate accordingly and case comes to an end there and then only, which would save the accused from unwarranted hardships and inconvenience of attending the Court; as stated above. In case, despite service of the aforesaid summons, if accused neglects to appear before the Court despite the option offered to him to appear through his learned advocate than in that case, if the Court for any just, valid reason does not want to give further extend the benefit of discretion to appear through learned advocate, may insist upon personal attendance of accused and issue fresh process accordingly to the accused. In fact, the view that this Court is

taking is duly borne-out by the provision made in this regard in Code itself when we look at the Form No. 1 under Section 61 of the Criminal Procedure Code, 1973 which pertains to Summons to an accused person appearing in the Second Schedule of the Code which reads as under :-

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FORM No. 1

SUMMONS TO AN ACCUSED PERSON

To (name of accused) of (address).
Whereas your attendance is necessary to answer to a charge of (state shortly the offence charged), you are hereby required to appear in person (or by pleader, as the case may be) before the (Magistrate) of ___, on the __ day of_____. Herein fail not.

Dated, this ___ day of _____,199__.

(Signature)"

6. These days, we are coming across cases where to mechanically issue process on some superficial reading of the complaint and direct the accused to remain personally present before the Court is not uncommon ! The learned Magistrate accordingly before directing the accused who may be quite innocent to remain personally present before the Court must apply his mind to the facts and circumstances of the case. In a given case mechanical issuance of summons to the accused to appear before the Court can prove to be quite harsh and unjust and hitting below the belt as it is not uncommon these days that due to political, trade and commercial, and for that purpose any other sort of personal rivalries wild allegations are just flung in face of any person with a sole view of his character assissination and make him dragged and trapped in the Court proceeding, tarnishing his public image, and reputation dishonestly abusing the process of the Court. Under the circumstances, whether the trial Court should allow itself to be so gullible and be unwittingly ready instrument in the hands of some scheming, unscrupulous complainants (!) Should be the first and foresmost question the learned Magistrate should invariably ask himself before issuing any process against the accused.

7. Infact this Court is quite of the opinion that whenever complaints are filed against the accused persons and if on the basis of the same process is issued, and as a further result thereof if accused straighway approaches the High Court under Sec. 482 of the Code, for quashing and setting aside the same, then at the admission stage itself, High Court should not ordinarily lightly entertain such an application unless the petitioner-accused satisfies that in response to the process issued against him, he in the first instance had appeared before the learned Magistrate and shown cause that since no prima facie case was made out against him no proceedings ought to have been initiated and entertained any further against him. The simple logic behind this view is that if accused can come to the High Court for quashing and setting aside proceedings taken up persuant to the complaint, why cannot he or why should he not go before the learned Magistrate who issued the process against him !! Further still, why for deciding the fact whether complaint discloses prima facie offence, complainant should be dragged to High Court and made to spend, when the said issue can as well be decided by the learned Magistrate as held by the Supreme Court in case of K.M Mathew versus State of Kerala (Supra) ! To lightly entertain applications for quashing proceedings and process issued persuant thereto under section 482 of the Code, in a given case may amount to unnecessarily punishing innocent complainant as if to seek justice before the Court by filing the complaint was a crime to be punished !! If for whatever reasons if ultimately quashing application of accused is to be dismissed, the complainant if be made party should be suitably compensated by imposing costs on accused.

8. In the result, this Criminal Misc. Application fails and the same is dismissed. The trial Court is directed to fix the date and dispose of the case as early as possible; preferably within 12 months, as the case appears to be pretty old ie., of the year 1985. While conducting the trial, the learned Magistrate shall bear in mind the direction and guidelines given by this Court in case of State of Gujarat versus Dr. C.K Patel, reported in (1991) 2 GLH 354. Not to hear and decide the case within the above time-limit, in absence of just and valid reason and also in the light of the decision of this Court rendered in case of State of Gujarat v. Dr. C.K Patel (Supra) can and accordingly would be viewed seriously.

8.1 Stay granted earlier stands vacated. Rule is

discharged.

8.2 That the learned Magistrate is further directed to issue fresh notice to the complainant and summons to the accused in the light of the direction given by me in above para 5 of this judgment, within 7 days from the date of the receipt of this judgment and order.

9. The trial Court is directed to report back to this Court as to when the trial commenced persuant to this order and was over, which the Registrar shall place before this Court for information and in case this Court is not available then before the concerned learned Unit Judge.

10. Today, we have come across several such matters wherein though the rule was made returnable long back, for whatever reasons the matters were not placed on the Board and heard. If in criminal cases, proceedings are stayed by this Court at the admission stage where rule is made returnable and yet if such matters are placed on the final hearing board, after quite long time, then it seriously prejudices the prosecution and the ultimately undermindes the cause of justice, if such matters sometimes having no substance are ultimatley dismissed ! In this view of the matter, all criminal cases wherein either the stay of investigation or for that purpose where the proceedings before the trial Court are stayed, irrespective of rule made returnable or not, I feel that in the overall interest of justice, such matters are required to be placed on Special Urgent Final Hearing Board to be heard and finally disposed off at the earliest dispatch. Looking to the urgency of matters, from time to time, additional bench for this purpose is required to be constituted. Accordingly, it is the duty of the Registrar to take stock of such matters and if need be to request the learned Chief Justice to constitute more bench. The Registrar is accordingly directed to bring to the notice, the observations made by me before the Hon'ble Chief Justice for My Lords consideration and giving necessary directions.

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Prakash*